IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1572 of 1980

For Approval and Signature:

HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TARABEN W/O.GULABDAS DHIRAJLAL

Versus

RANGILDAS BECHARDAS BHAGAT

Appearance:

1. First Appeal No. 1572 of 1980

MS VASUBEN P SHAH for Petitioner No. 1-2

MS KJ BRAHMBHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 16/03/2004

ORAL JUDGEMENT

1. The appellants were the original defendants no.

1 and 2 in Special Civil Suit No. 104 of 1977 in the Court of 3rd Joint Civil Judge (SD), Surat. The respondents no. 1 and 2 had filed the said suit to recover possession of the suit property. The learned Judge after recording the evidence rejected the plaintiffs' claim of full ownership to the suit property, but held that the plaintiffs had right of residence for their life in the ground floor of the suit property under the will executed by Gulabdas Dhirajbhai, the husband of the appellant no.1. He, therefore, by his judgment and decree dated 30-9-1980, directed the appellants to hand over vacant and peaceful possession of the ground floor of the suit property to the plaintiffs.

3. The appellants have, therefore, filed this appeal challenging the said judgment and decree. It appears that the decree of the trial Court has been stayed during the pendency of the appeal.

4. It appears that the respondents no.1 and 2 who are the original plaintiffs were 72 and 57 years old respectively when the suit was filed in the year 1977. Under the decree, they were held entitled to reside in the ground floor of the suit property for their life. There is no appearance on their behalf. The decree was stayed during the pendency of the appeal. Looking to their ages, it appears that the matter has become infructuous by passage of time. The appeal is, therefore, dismissed.

(M.C. Patel, J.)

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